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NO. 97-2063

In the Supreme Court of the United States

OCTOBER TERM, 1997

STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY,

Petitioner,

v.

THE HONORABLE JOHN SPERONI,
TAMMY SNIDER AND MICHAEL AVERY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE ILLINOIS SUPREME COURT

MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF and *AMICUS CURIAE* BRIEF SUPPORTING PETITION FOR A WRIT OF CERTIORARI

(Filed In Support of State Farm Mutual Automobile Insurance Company)

LANETTA M. COOPER
Senior Staff Attorney

Office of Public Insurance Counsel
333 Guadalupe, Suite 3-120
Austin, Texas 78701
(512) 322-4143

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

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On Petition for a Writ of Certiorari to the Illinois Supreme Court

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MOTION OF THE OFFICE OF PUBLIC INSURANCE COUNSEL FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF IN SUPORT OF PETITIONER

The Office of Public Insurance Counsel (OPIC) hereby moves pursuant to Rule 37 of this Court, for leave to file an *amicus curiae* brief in support of Petitioner. The motion is necessitated by the withholding of consent by Respondent the Honorable John Speroni.

OPIC is a Texas state agency charged with assessing the impact of insurance rates, rules, laws and forms on

insurance consumers in Texas, and advocating the rights of Texas insurance consumers as a class.

The issues presented in this case of are of great significance to Texas insurance consumers. Whether Texas residents who are joined in a class action outside the exterior boundaries of their state and who have no significant contacts with the distant forum can be subject to the substantive laws of that forum concerning their claims is of fundamental importance to Texas consumers purchasing automobile insurance in Texas. Texas consumers' expectations are that the full authority and protections of Texas law be available to Texas consumers for claims arising out of automobile insurance policies issued to them. Specifically, the Texas substantive laws which correspond to the Illinois substantive law applied in the underlying class action provide greater consumer protections and rights. Consequently, application of the Illinois law in the underlying case conflicts with the corresponding Texas substantive law to the detriment and injury of Texas consumers.

OPIC believes its brief will provide the Court with relevant legal and factual information not already brought to the Court's attention. First, OPIC's brief focuses on the difference between Texas law and Illinois law sought to be applied in the instant action to Texas consumers and the deleterious effect application of Illinois law will have on Texas consumers. Second, OPIC's brief discusses the constitutional impact of the application of Illinois law to Texas consumers who have tenuous contacts with Illinois in that it violates the Due Process Clause of the Fourteenth Amendment and the Full Faith and Credit Act of the U.S. Constitution.

In order to bring these particular issues to the attention of the Court, OPIC requests leave to file its *amicus* brief submitted herewith.

Respectfully submitted,

/s/ Lanetta M. Cooper

Lanetta M. Cooper, Senior Staff Attorney
Texas State Bar # 04780600

Office of Public Insurance Counsel
333 Guadalupe, Suite 3-120
Austin, Texas 78701
Phone: (512) 322-4143
Fax: (512) 322-4148

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BRIEF OF AMICUS CURIAE

INTEREST OF *AMICUS CURIAE*

The Office of Public Insurance Counsel (OPIC) of the State of Texas respectfully files this *amicus curiae* brief in support of the position of Petitioners State Farm Mutual Automobile Insurance Company that the laws of Illinois should not be applied to Texas plaintiffs' claims in the class action lawsuit underlying this appeal.

OPIC is a Texas state governmental agency charged with assessing the impact of insurance rates, rules, laws and forms on insurance consumers in Texas, and advocating the

rights of Texas Insurance consumers as a class. TEX. INS. CODE ANN. art 1.35A (Vernon Supp. 1998) *Amicus curiae* is filing this brief because the issue of whether Texas residents who are joined in a class action outside the exterior boundaries of their state and who have no significant contacts with the distant forum can be subject to the substantive laws of that forum concerning their claims is of fundamental importance to Texas consumers purchasing automobile insurance in Texas. Texas consumers' expectations are that the full authority and protections of Texas law be available to Texas consumers for claims arising out of automobile insurance policies issued to them. To subvert these expectations by substituting Illinois law for Texas law is fundamentally unfair to Texas consumers' expectations concerning the appropriate manner insurers licensed in Texas should conduct their business with them. Specifically, the Texas substantive laws which correspond to the Illinois substantive law applied in the underlying class action provide greater consumer protections and rights. Consequently, application of the Illinois law in the underlying case conflicts with the corresponding Texas substantive law to the detriment and injury of Texas consumers.

Respondent, the Honorable John Speroni, withheld consent for OPIC to file this *amicus curiae* brief. Hence, OPIC has filed a separate Motion for Leave to File an *amicus curiae* brief in support of Petitioner.

SUMMARY OF THE ARGUMENT

OPIC is not addressing whether the notification ordered

by Judge Speroni[1] in the underlying court action is constitutionally defective. OPIC's argument focuses on whether, as a matter of constitutional law, Texas citizens who are joined in a class action outside the exterior boundaries of their state and who have no significant contacts with the distant forum may be subject to the substantive laws of that forum regarding its claims against State Farm Mutual Automobile Insurnace Company ("State Farm"). The interests at stake for Texas citizens are substantial should Illinois not apply Texas law in the underlying case regarding their claims.[2] Hence, the arguments set out in this brief are meritorious to ensure Texas citizens will be heard by this Court in its deliberations.

It is fundamentally unfair to apply Illinois substantive

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1 Re: *Snider v.State Farm Mutual Automobile Ins. Co.*, No. 97-L-114 (Ill. Cir. Ct. 2-11-98) (*Order Setting Exclusion Request Deadline, Approving Form of Notice of Class Certification; and Directive Implemention of Notice Plan*), (Petitioner's Brief, Appendix 1).

2 It is not clear from the record presented by Petitioner that the Illinois court has foreclosed the application of Texas law to the claim of Texas citizens in the underlying case. In his order certifying the Plaintiff case that includes Texas citizens, Judge Speroni stated:

> While it is not necessary for the Court at this time to decide upon choice of law as to the breach of contract claim, it does note that the eventual decision as to choice of law will not prevent the certification of the class in this case. ... The Court retains the right to divide the litigation into a manageable number of sub-classes under 2-802(b) should differences in law present themselves.

Snider v. State Farm, No 97-L-114 (Ill. Cir. Ct. Dec. 5, 1997) (*Order & Findings That Action may be Maintained as a Class Action For Breach of Contract, Consumer Fraud & Equitable Relief Claim.*) (Petitioner's Brief, Appendix B,p. 11a).

law to claims of Texas citizens arising out of the business of insurance. Texas strenuously regulates the business of insurance occurring within its borders. It is a matter of state concern acknowledged and protected against interference by federal law. McCARRAN-FERGUSON ACT, 15 U.S.C.A. §§ 1011, 1012 (1997). The business of insurance in this case relates to automobile insurance, one of the most, if not the most, state-regulated lines of insurance written in Texas. No licensed insurer can issue an automobile policy in Texas that provides lesser coverage than the standard policy promulgated by the Commissioner of the Texas Department of Insurance.[3] Further, state law which is incorporated into every policy of insurance issued to Texas policyholders mandates that the law of Texas govern the provisions of the policy. Consequently, both the state of Texas and Texas consumers' intentions are that the full authority and protections of Texas law be available to Texas consumers for claims arising out of auto insurance policies issued to them. To subvert these intentions by substituting Illinois law for Texas law is fundamentally unfair to Texas consumers' expectations concerning the appropriate manner insurers licensed in Texas conduct their business with them. This is contrary to Texas consumers' due process rights under the U.S. Constitution.

In addition, Illinois law conflicts with Texas law to the detriment of Texas consumers. Texas consumers have two causes of action available to address insurer deceptive trade

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3 The Texas Department of Insurance is the state agency created to regulate the business of insurance in Texas. TEX. INS. CODE. ANN. art. 1.101A (Vernon Supp. 1998). Previous to September 1, 1993, the agency was under the direction of a three member State Board of Insurance. Effective September 1, 1993, the Legislature abolished the Board and its functions are now performed by the Commissioner of Insurance.

practices. Unlike Illinois, Texas ensures its consumers are protected against deceptive trade practices regardless of whether the insurance producers knew the acts committed were violations of the Act. Consumers also have additional state laws incorporated into their policies that address the issues in contest in the case below — whether State Farm can refuse to indemnify insureds for the cost of factory authorized repair parts but instead limit the indemnification to the cost of repair parts that are not factory authorized. These Texas laws reflect a state policy towards unfair trade practices that is far more rigorous and far more reaching in its protection of Texas consumers than the corresponding Illinois laws. Moreover, Illinois does not have significant contacts with the claims asserted by Texas plaintiffs. Texas plaintiffs are neither residents of Illinois nor employees daily commuting to and working within the borders of Illinois. The underlying policies of insurance issued to Texas consumers were issued for delivery in Texas. The only contact Illinois can assert is that State Farm is domiciled in Illinois, an insufficient contact to meet constitutional standards.

ARGUMENT

Application of Illinois substantive law to the claims of Texas Plaintiffs would violate Texas consumers rights under the Full Faith and Credit Clause of Art. IV § 1 and the Due Process Clause of the Fourteenth Amendment of the U. S. Constitution.

Allstate Ins. Co. v. Hague, 449 U.S. 302 (1981) and *Phillips Petroleum Co. v. Shutts,* 472 U.S. 797 (1985) provide guidelines for the selection of the choice of law by a forum with multistate claims for withstanding constitutional

scrutiny under the Full Faith and Credit Clause of Art. IV § 1[4] and the Due Process Clause[5] of the Fourteenth Amendment to the U. S. Constitution. These guidelines seek to prevent parochial entrenchments by the forum state upon the interests of other states (*Thomas v. Washington Gas Light Co.*, 448 U.S. 261 at 272 (1980)) and to provide fundamental fairmess for non-resident parties. *Phillips,* 472 U.S. at 818. *Phillips* and *Allstate* hold that for Illinois to apply its law to Texas plaintiffs it must have a significant contact or significant aggregation of contacts, creating state interests over those claims and that the Illinois selection of its laws is not arbitrary or fundamentally unfair to Texas plaintiffs. *Phillips,* 472 U.S. at 818. *Allstate,* 449 U.S. at 313. Of course, the threshold question is whether the relevant Texas law conflicts with the Illinois law applicable to the underlying case. Without conflict, Texas plaintiffs would suffer no injury and without injury there is no real controversy to be resolved by this Court. *Phillips,* 472 U.S. at 815.

Here, the relevant Texas law conflicts with the corresponding Illinois law applicable to the underlying case to the detriment of Texas consumers. The underlying case is a suit alleging damages caused by State Farm's breach of contract with its policyholders and State Farm's violation of the Illinois Consumer Fraud and Deceptive Business

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4 The Full Faith and Credit Clause. Art. IV § 1 provides "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other state. And the Congress may by general laws prescribe the manner in which such Acts, Records, and Proceedings shall be proved, and the effect thereof."

5 The Due Process Clause of the Fourteenth Amendment provides that no state "shall. . .deprive any person of life, liberty, or property without due process of law..."

Practices Act (the "CFA"), 815 ILCS 505/1 et. seq. Consumers' rights under the CFA are more restrictive than Texas' corresponding laws. Unlike Illinois, Texas provides consumers with two private causes of action — the Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. AND COM. CODE ANN. § 17.41 et. seq. (Vernon 1987 and Vernon Supp. 1998) ("DTPA") and the Unfair Competition and Unfair Practices Act, TEX. INS. CODE ANN. art. 21.21 (Vernon 1981 and Vernon Supp. 1998) ("art. 21.21"). While the CFA permits recovery of attorney fees within the discretion of the judge, the DTPA provides recovery of court cost and reasonable and necessary attorney fees as a matter of right should the consumer prevail. DTPA § 17.50. In addition, the CFA limits insurance producer liability to those acts the producer knows are misleading or deceptive CFA § 10(b). Art. 21.21 protects Texas consumers against insurance producers performing unfair trade practice acts regardless of whether the producer has actual knowledge that the act is prohibited. art. 21.21 § 16. In addition, Texas law places legal liability upon adjusters for deceptive trade practices. art. 21.21 § 2. Texas law provides more extensive protections against unfair trade practices which include a subsection specifically addressing unfair claim settlement practices. art. 21.21 § 4(10). Texas law also makes it an unfair trade practice to fail to "disclose any matter required by law to be disclosed, including a failure to make disclosure in accordance with another provision of this code." art. 21.21 § 4(11)(e). This is a significant Texas consumer right in relation to this case because Texas law requires disclosures to beneficiaries or third-party claimants regarding their claim settlement relating to the repair of their automobiles. TEX. INS. CODE ANN. art. 5.07-1 (Vernon Supp. 1998). Art 5.07-1 provides

consumer rights under Texas policies[6] in addition to the rights alleged by the Illinois court. The article sets out specific rights consumers have involving their choice of vendor or service providers regarding the repair of their automobile. Texas law also places the burden of proof relating to policy exclusions or exceptions from coverage upon the insuer. TEX. INS. CODE ANN. art. 21.58 (Vernon Supp. 1998). Lstly, applying Illinois law conflicts with Texas law requiing insurance policies payable to Texas citizens or inhabitants by an insurer doing business in this state be governed by Texas law. TEX. INS. CODE ANN. art. 21.42 (Vernon 1981), *Rockwood Ins. Co. v. Williamson*, 596 F.Supp. 1524. (N.D. Texas 1984). These corresponding Texas laws establish greater rights and provide greater consumer protections for Texas plaintiffs than their Illinois counterparts set ou in the underlying case. Failure to apply Texas substantive lws to Texas claims in the case below will deny the Texas plintiffs these greater rights and protections to their detrimnt.

The business of insurance is of public concern and ubject to strict regulation and control by Texas. *Hamaker*, 93 S.W.2d 893. Texas' purpose of regulating insurance i to serve the public interest in that business as well as to rotect the rights of both insurer and insured. *Glenn Falls ns. Co. v. McGowan*, 236 S.W.2d 108, 109 (Tex. 1951). The business of insurance is a matter of state concern acknowldged and protected against interference by federal aw. McCARRAN-FERGUSON ACT, 15 U.S.C.A. §§ 1011, 1012

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6 It is well settled Texas law that statutes bearing on the subject matter of the contract become a part of the contract just as though they had been copied therein. *Harkins v. Indiana Mutual Ins. Co.*, 234 S.W.2d 430, 431 (Tex. Civ. App.—Galveston 1950, no writ hist.) *See also Hamaker v. American States Ins. Co. of Texas*, 493 S.W.2d 893, 895 (Tex. Civ. Ap.—Houston [1st Dist.] 1973 ref. n.r.e.)

(1997). The impact of State Farm's insurance operations on the business of insurance within the state of Texas is significant. The State Farm Group of which State Farm is the principal writer is the leading writer of automobile insurance comprising 25.8% of the Texas market with premium volume of $2.1 billion as of the 4th quarter of 1997[7], the most recent date data is available. Texas Dept. of Insurance, "Quarterly Legislative Report on Market Conditions, 4th Quarter 1997" (TDI—July 23, 1998). Texas enforces its public policy through a pervasive system of regulation which includes the laws stated above. Under Texas law, no insurer may issue an automobile policy in Texas that provides lesser coverage than the standard policy promulgated by the Commissioner of the Texas Department of Insurance. TEX. INS. CODE ANN. art. 5.06 (Vernon Supp. 1998). The rates State Farm may charge for its automobile insurance policies are regulated. TEX. INS. CODE ANN. art. 5.101 (Vernon Supp. 1998). State Farm's operations are closely monitored by the Texas Department of Insurance. TEX. INS. CODE ANN. arts. 1.15, 1.15A (Vernon Supp. 1998). Texas' interests in ensuring State Farm's conduct with Texas consumers is consistent with its public policy as set out in its system of regulation is substantial. The application of Illinois law to Texas claims is based on nothing more than the fact that State Farm is domiciled in Illinois. This tenuous nexus to State Farm's actions occurring within the boundaries of Texas does not justify the usurpation of Texas' authority to regulate State Farm's operations occurring within its boundaries. Applying Illinois law to Texas claims in this instance results in unreasonably and unfairly imposing Illinois public policy on

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7 Of this amount, State Farm wrote $2.07 billion of the Group's total premiums.

Texas contrary to the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. *BMW of North America, Inc. v. Gore,* ____ US ____, 116 S.Ct. 1589 (1996).

Illinois contact with Texas plaintiffs and the occurrence or transaction is insignificant. Texas plaintiffs do not reside in Illinois, nor do they commute to or work within the boundries of Illinois on a daily basis as in the fact situation underlying *Allstate,* 449 U.S. 304. It is not relevant whether Texas plaintiffs did not elect to opt out of the underlying class action. *Phillips,* 472 U.S. at 820. the likelihood that any Texas plaintiff's claim relates to an accident occurring within Illinois is fortuitous and unsupported by the record before this Court. Illinois contact with Texas claims and plaintiffs is that State Farm is domiciled in that state. This contact is insufficient to provide the minimum contacts necessary to apply Illinois laws to Texas claims consistent with the Due Process Clause of the Fourteenth Amendment to the U. S. Constitution and the Full Faith and Credit Clause of Art. IV § 1 of the U.S. Constitution.

The application of Illinois law to Texas plaintiffs is fundamentally unfair. As brought out above, it unreasonably imposes Illinois policy on the state of Texas and its citizens. In addition, the application of Illinois law to Texas claims is contrary to the expectations of the parties. The expectations of the parties emanate from contractual commitments established pursuant to automobile insurance policies to indemnify Texas plaintiffs for losses incurred under their policies. Texas law, which is incorporated into every automobile insurance policy issued in Texas[8], mandates that

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[8] It is well-settled Texas law that statutes bearing on the subject

the law of Texas govern the provisions of the policy. TEX. INS. CODE ANN. art. 21.42 (Vernon 1981). Specifically, this statute reads as follows:

> Any contract of insurance payable to any citizen or inhabitant of this State by any insurance company or corporation doing business within this State shall be held to be a contract made and entered into under and by virtue of the laws of this State relating to insurance, and governed thereby, notwithstanding such policy or contract of insurance may provide that the contract was executed and the premiums and policy (in case it becomes a demand) should be payable without this State, or at the home office of the company or corporation issuing the same.

Moreover, commonsense dictates that the parties expect that the consumer protection laws and the other laws regulating the business of insurance within the state passed by Texas legislators as representatives of its citizens would apply to insurer acts involving Texas citizens and regarding Texas claims occurring within the boundaries of Texas. Consequently, applying Illinois law to Texas claims in the underlying class action is contrary to the reasonable expectations of the parties, and is therefore, fundamentally unfair.

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footnote 8 continued

matter of the contract become a part of the contract just as though they had been copied therein. *Harkins v. Indiana Mutual Ins. Co.*, 234 S.W.2d 430, 431 (Tex. Civ. App.—Galveston 1950, no writ hist.). *See also Hamaker v. American States Ins. Co. of Texas*, 493 S.W.2d 893, 895 (Tex. Civ. App.—Houston [1st Dist.] 1973 ref. n.r.e.)

CONCLUSION

Application of Illinois substantive law to Texas plaintiffs' claims in the underlying class action is constitutionally impermissible. The State of Illinois' contacts with Texas plaintiffs and their claims are constitutionally insignificant. Moreover, the effect of applying Illinois substantive law to Texas claims arising from insurer activities occurring within the boundaries of Texas unreasonably and unfairly imposes Illinois public policy on Texas and its residents to the detriment and injury of Texas consumers, contrary to their rights guaranteed under the Due Process Clause of the Fourteenth Amendment in the U. S. Constitution. Lastly, the Illinois law applied in the underlying case is inconsistent with corresponding Texas law to the detriment and injury of Texas consumers and is contrary to Texas plaintiffs' reasonable expectations established by contract.

For these reasons, Texas substantive law should be applied to Texas ... plaintiffs' claims in the underlying class action. Application of Illinois substantive law to these Texas claims should be determined constitutionally impermissible.

Respectfully submitted this _____ day of _____, 1998.

/s/ Lanetta M. Cooper

Lanetta M. Cooper, Senior Staff Attorney
Texas State Bar # 04780600

Office of Public Insurance Counsel
333 Guadalupe, Suite 3-120
Austin, Texas 78701
Phone: (512) 322-4143
Fax: (512) 322-4148